



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 133

WEDNESDAY, FEBRUARY 19, 2014

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE April 7, 2014
3:57pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to recreational vehicles.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 190A IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this chapter:*

6 *(1) "Area of sales responsibility," in relation to new recreational vehicle dealers,*
7 *means a geographical area agreed to by a new recreational vehicle dealer and the*
8 *manufacturer in a dealer agreement in which the dealer has the exclusive right to*
9 *display or sell the new recreational vehicles of a manufacturer of a particular*
10 *line-make to the public;*

11 *(2) "Dealer agreement" means a written agreement or contract entered into between*
12 *a new recreational vehicle manufacturer and a new recreational vehicle dealer*
13 *that fixes the rights and responsibilities of the parties and pursuant to which the*
14 *dealer has the exclusive right to sell specific line-makes and models of the*
15 *manufacturer's new recreational vehicles;*

16 *(3) "Established place of business" shall not include tents, temporary stands, lots, or*
17 *other temporary quarters but shall include the following:*

18 *(a) A paved or gravel lot for customer parking and for the showing and storage*
19 *of recreational vehicles;*

20 *(b) An indoor office with public areas sufficient to conduct sales transactions*
21 *with customers;*

22 *(c) Restroom facilities available to the public; and*

23 *(d) A service and parts area, separated from the public areas, equipped with*
24 *tools, equipment, and replacement parts necessary for reasonably expected*
25 *warranty and service needs;*

26 *(4) "Family member" means a spouse, child, grandchild, parent, sibling, niece or*
27 *nephew, or the spouse thereof;*

1 (5) "New recreational vehicle dealer" means a recreational vehicle dealer who holds
 2 a valid dealer agreement, sales and service agreement, franchise, or contract
 3 granted by the manufacturer for the sale of the manufacturer's new recreational
 4 vehicles;

5 (6) "Factory campaign" means an effort by a new recreational vehicle warrantor to
 6 contact recreational vehicle owners or recreational vehicle dealers in order to
 7 address an issue concerning a recreational vehicle problem, defective part, or
 8 equipment;

9 (7) "Line-make" means a specific series of recreational vehicle products that:

10 (a) Are identified by a common series trade name or trademark;

11 (b) Are targeted to a particular market segment based on the decor, features,
 12 equipment, size, weight, and price range;

13 (c) Have dimensions and interior floor plans that distinguish the recreational
 14 vehicles from recreational vehicles that have substantially the same decor,
 15 features, equipment, weight, and price;

16 (d) Belong to a single, distinct classification of recreational vehicle product type
 17 that has a substantial degree of commonality in the construction of the
 18 chassis, frame, and body; and

19 (e) Are authorized for sale by the dealer in the dealer agreement;

20 (8) "Manufacturer" means any person, partnership, firm, association, corporation,
 21 or trust, resident or nonresident, who manufactures or assembles new
 22 recreational vehicles, or imports for distribution through distributors of new
 23 recreational vehicles, or any partnership, firm, association, joint venture,
 24 corporation, or trust, resident or nonresident, which is controlled by the
 25 manufacturer. Additionally, the term "manufacturer" shall include the following
 26 terms:

27 (a) "Distributor" means any person, firm, association, corporation, or trust,

resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new recreational vehicle to new recreational vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, or who in whole or in part offers for sale, sells, or distributes any new recreational vehicle to new recreational vehicle dealers;

(b) "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new recreational vehicles to a distributor, wholesaler, or new recreational vehicle dealer, or for directing or supervising, in whole or in part, factory representatives, and shall further include any sales promotion organization, whether it is a person, firm, or corporation, which is engaged in promoting the sale of new recreational vehicles in this state of a particular line-make to new recreational vehicle dealers; and

(c) "Factory representative" means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting the sale of new recreational vehicles, or for supervising or contracting with dealers, or prospective dealers;

(9) "Proprietary part" means a recreational vehicle part manufactured by or for a recreational vehicle manufacturer and sold exclusively by a recreational vehicle manufacturer;

(10) "Recreational vehicle" means a vehicle that:

(a) Is primarily designed as temporary living quarters for noncommercial recreation or camping use;

(b) Has its own motive power or is towed by another vehicle;

(c) Is regulated by the National Highway Traffic Safety Administration as a vehicle; and

- 1 (d) Does not require a special highway use permit;
 2 The term "recreational vehicle" includes motor homes, travel trailers, fifth-wheel
 3 trailers, and folding camping trailers;
- 4 (11) "Motor home" means a recreational vehicle built on a self-propelled motor
 5 vehicle chassis that must contain at least four (4) of the following permanently
 6 installed independent life support systems:
- 7 (a) A cooking facility with an onboard fuel source;
 8 (b) A potable water supply system that includes at least a sink, a faucet, and a
 9 water tank with an exterior service supply connection;
 10 (c) A toilet with exterior evacuation;
 11 (d) A gas or electric refrigerator;
 12 (e) A heating or air conditioning system with an onboard power or fuel source
 13 separate from the vehicle engine; or
 14 (f) A 110-125 volt electric power supply;
- 15 (12) "Travel trailer" means a recreational vehicle designed to be towed by a motorized
 16 vehicle;
- 17 (13) "Fifth-wheel trailer" means a recreational vehicle designed to be towed by a
 18 motorized vehicle by means of a towing mechanism that is mounted above or
 19 forward of the tow vehicle's rear axle;
- 20 (14) "Folding camping trailer" means a recreational vehicle constructed with
 21 partially collapsible side walls that fold for travel and unfold and extend in the
 22 set-up mode, which is designed to be towed by a motorized vehicle;
- 23 (15) "New recreational vehicle" means a recreational vehicle that is in the possession
 24 of the manufacturer, distributor, or wholesaler, or has been sold to the holder of
 25 a valid dealer agreement, granted by the manufacturer, or distributor for the sale
 26 of the line-make of new recreational vehicle, and on which the original title has
 27 not been issued from the franchised dealer;

(16) "Recreational vehicle salesperson" means any person who, for gain or compensation of any kind, either directly or indirectly, regularly or occasionally, by any form of agreement or arrangement, sells or negotiates for the sale of any new recreational vehicle for any new recreational vehicle dealer to any one (1) or more third parties;

(17) "Supplier" means any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicle parts, accessories, or components;

(18) "Transient customer" means a person who is temporarily traveling through the area of sales responsibility of a recreational vehicle dealer; and

(19) "Warrantor" means any person, firm, corporation, or business entity, including any manufacturer or supplier, which provides a written warranty to the consumer in connection with a new recreational vehicle or parts, accessories, or components thereof. The term does not include a person that provides a service contract, mechanical or other insurance, or an extended warranty sold for separate consideration by a dealer or other person not controlled by a warrantor.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

(1) The Motor Vehicle Commission shall, under administrative regulations promulgated by it, issue the licenses provided for by KRS 190.010 to 190.080 to recreational vehicle dealers and manufacturers and shall have supervision over licensees in respect to this chapter and all the provisions of KRS 190.010 to 190.080 that are applicable to recreational vehicle manufacturers and dealers.

(2) New recreational vehicle dealers shall also be subject to the provisions of KRS 190.090 to 190.140 and 190.270 to 190.320.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

(1) The following conditions shall apply to the area of sales responsibility of a new

recreational vehicle dealer included in a dealer agreement between a new recreational vehicle manufacturer and a dealer:

(a) A manufacturer or distributor shall not sell a recreational vehicle in this state to or through a dealer without first having entered into a written dealer agreement with a dealer which has been signed by both parties;

(b) The new recreational vehicle manufacturer shall designate in the dealer agreement the area of sales responsibility in which the dealer has the exclusive right to display or sell the manufacturer's new recreational vehicles of a line-make included in the dealer agreement;

(c) The manufacturer shall not contract with another dealer for the sale of the same line-make included in the designated area for the duration of the agreement; and

(d) The area of sales responsibility shall not be reviewed or changed without the consent of both parties until one (1) year after the execution of the dealer agreement.

(2) A new recreational vehicle dealer shall not conduct sales activity or display for sale recreational vehicles outside of its designated area of sales responsibility except as provided in subsection (7) of Section 16 of this Act and the laws of this state.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

(1) A recreational vehicle manufacturer, directly or through any officer, agent, or employee, may terminate or not renew a new recreational vehicle dealer's agreement with good cause.

(2) A recreational vehicle manufacturer has the burden of showing good cause when terminating or not renewing a dealer agreement for cause. For the purpose of determining whether there is good cause for the proposed action, any of the

following factors may be considered:

(a) The extent of the penetration of the dealer in the area of sales responsibility;

(b) The extent and quality of the service of the dealer under recreational vehicle warranties;

(c) The nature and extent of the investment of the dealer in the business of the dealer;

(d) The adequacy of the service facilities, equipment, parts, supplies, and personnel of the dealer;

(e) The effect of the proposed action on the community;

(f) Whether the dealer fails to follow agreed-upon procedures or standards related to the overall operation of the dealership; and

(g) The performance by the dealer under the terms of the dealer agreement.

(3) Except as provided in paragraph (c) or (d) of this subsection, the manufacturer shall provide written notice at least ninety (90) days before the effective date of the termination or nonrenewal of the dealer agreement in the event the dealer is being terminated for good cause.

(a) The notice shall state all of the reasons for the termination or nonrenewal of the dealer agreement;

(b) The notice shall state that if the dealer provides to the manufacturer within thirty (30) days after the dealer receives the original notice a written notification of the intent of the dealer to cure all claimed deficiencies, the dealer shall have ninety (90) days from the receipt of the original notice to correct the claimed deficiencies. If all of the deficiencies are corrected within the ninety (90) day time period, the notice shall be deemed void and the manufacturer shall not terminate or not renew the dealer agreement because of the claimed deficiencies stated in the notice. If the dealer does

1 not provide a notification of intent to cure deficiencies within the thirty (30)
 2 day time period, the termination or nonrenewal of the dealer agreement
 3 shall take effect thirty (30) days from the dealer's receipt of the original
 4 notice;

5 (c) A manufacturer may reduce the notice period of this subsection from ninety
 6 (90) days to thirty (30) days if the grounds for termination or nonrenewal of
 7 the dealer agreement by the manufacturer are any of the following factors:

- 8 1. A conviction of a felony or a plea of guilty or nolo contendere to a
 9 felony by a dealer or an owner of a dealership of a crime that was
 10 committed during the time frame of the current dealer agreement;
 11 provided there is full disclosure, in writing, of any felony conviction or
 12 plea of guilty or nolo contendere to any such felony crime that
 13 occurred within ten (10) years of entering into such dealer agreement;
- 14 2. The abandonment or closing of the business operations of the dealer
 15 for ten (10) consecutive business days without contacting the
 16 manufacturer prior to the closing unless the closing is due to an act of
 17 God, strike, labor difficulty, or other cause over which the dealer has
 18 no control;
- 19 3. A misrepresentation to the manufacturer by the dealer that materially
 20 affects the business relationship between the dealer and the
 21 manufacturer;
- 22 4. A suspension or revocation of the dealer's license, or refusal to renew
 23 the dealer's license, by the Motor Vehicle Commission; or
- 24 5. A material violation of this chapter which is not cured within thirty
 25 (30) days after the written notice by the manufacturer;

26 (d) A manufacturer shall not be required to provide notice or an opportunity to
 27 correct deficiencies under this subsection if the grounds for termination or

nonrenewal of the dealer agreement by the manufacturer include one (1) of the following:

1. The dealer becomes insolvent;

2. The dealer is bankrupt; or

3. The dealer makes an assignment for the benefit of creditors.

→ SECTION 5. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

(1) A new recreational vehicle dealer may terminate a dealer agreement with a recreational vehicle manufacturer with or without good cause. If the dealer terminates or does not renew the dealer agreement with good cause, the manufacturer shall comply with the provisions of subsection (5) of this section. If the dealer terminates or does not renew the dealer agreement without good cause, the provisions of subsection (5) of this section shall not apply. A dealer that terminates a dealer agreement for good cause shall provide the manufacturer with written notice at least ninety (90) days prior to the effective date of the termination of the dealer agreement.

(2) All of the following conditions shall apply to a termination of a dealer agreement under this section for good cause:

(a) The notice described in subsection (1) of this section shall state all reasons for the proposed termination; and

(b) The notice described in subsection (1) of this section shall state that if the manufacturer provides to the dealer within thirty (30) days after the manufacturer receives the notice of termination a written notification of intent to cure all claimed deficiencies, the manufacturer shall have ninety (90) days after the manufacturer's receipt of the original notice to correct the deficiencies. If all of the deficiencies are corrected within the ninety (90) day period, the notice shall be deemed void and the dealer shall not

terminate the dealer agreement because of the claimed deficiencies stated in the notice. If the manufacturer does not provide a notification of intent to cure deficiencies within thirty (30) days of receiving the original notice, the termination shall take effect thirty (30) days from the manufacturer's receipt of the original notice.

(3) The dealer has the burden of showing good cause. Any of the following factors shall be considered good cause for the proposed termination of a dealer agreement by a dealer:

(a) A conviction of a felony or a plea of guilty or nolo contendere to a felony by a manufacturer of a crime that was committed during the time frame of the current dealer agreement; provided there is full disclosure, in writing, of any felony conviction or plea of guilty or nolo contendere to any such felony crime that occurred within ten (10) years of entering into the dealer agreement;

(b) Abandonment or permanent closing of the business operations of the manufacturer for ten (10) consecutive business days without contacting the dealer prior to the closing unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control;

(c) A misrepresentation to the dealer by the manufacturer that materially affects the business relationship between the dealer and manufacturer;

(d) A material violation of any of the provisions of this chapter by the manufacturer;

(e) A material breach of the dealer agreement by the manufacturer; or

(f) The manufacturer becomes insolvent, is bankrupt, or makes an assignment for the benefit of the creditors.

(4) A dealer is not required to provide notice or an opportunity to correct deficiencies under this section if the grounds for termination or nonrenewal of the dealer

1 agreement by the dealer includes one (1) of the following:

2 (a) The manufacturer becomes insolvent;

3 (b) The manufacturer is bankrupt; or

4 (c) The manufacturer makes an assignment for the benefit of creditors.

5 (5) If the manufacturer fails to provide the notice of intent to cure or fails to cure
 6 any claimed deficiencies pursuant to subsection (2) of this section, the
 7 manufacturer shall, at the election of the dealer and within forty-five (45) days
 8 after termination or nonrenewal, repurchase as follows:

9 (a) All new, untitled recreational vehicles that were acquired from the
 10 manufacturer within the twelve (12) months prior to the effective date of the
 11 notice of termination of the dealer agreement that have not been used,
 12 except for demonstration purposes, and that have not been altered or
 13 damaged, may be repurchased at one hundred percent (100%) of the net
 14 invoice cost of the recreational vehicles, including transportation, less
 15 applicable rebates and discounts to the dealer. In the event any of the
 16 vehicles repurchased pursuant to this paragraph are damaged, but do not
 17 trigger a consumer disclosure requirement, the amount due the dealer shall
 18 be reduced by the cost to repair the vehicle. Damage prior to delivery to the
 19 dealer that is disclosed at the time of delivery shall not disqualify
 20 repurchase of that vehicle under this section;

21 (b) All current and undamaged accessories and proprietary parts sold to the
 22 dealer for resale by the manufacturer or distributor within the twelve (12)
 23 months prior to the effective date of the termination of the dealer agreement
 24 that are accompanied by the original invoice may be repurchased at one
 25 hundred five percent (105%) of the original net price paid to the
 26 manufacturer to compensate the dealer for handling, packing, and shipping
 27 the accessories and parts; and

1 (c) Any properly functioning diagnostic equipment, special tools, current
 2 signage, and other equipment and machinery at one hundred percent
 3 (100%) of the dealer's net cost plus freight, destination, delivery, and
 4 distribution charges and sales taxes, if any, shall be repurchased if it was
 5 purchased by the dealer upon the manufacturer's request within five (5)
 6 years before termination, cancellation, or nonrenewal, and it can no longer
 7 be used in the normal course of the dealers' ongoing business. The
 8 manufacturer or distributor shall pay the dealer within thirty (30) days after
 9 receipt of the returned items.

10 (6) The dealer shall show clear title to vehicle inventory and promptly return or
 11 arrange for the return of all the items the manufacturer is required to repurchase
 12 under subsection (5) of this section at the expense of the manufacturer.

13 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO
 14 READ AS FOLLOWS:

15 The Motor Vehicle Commission shall not prohibit a new recreational vehicle dealer
 16 from selling the remaining in-stock recreational vehicles of a line-make subject to a
 17 dealer agreement after that dealer agreement has been terminated or not renewed
 18 pursuant to the provisions of Section 4 or 5 of this Act. If recreational vehicles of a
 19 line-make that was subject to a terminated dealer agreement are not repurchased or
 20 required to be repurchased by the manufacturer, the dealer may continue to sell all
 21 recreational vehicles that were subject to the terminated dealer agreement and were in
 22 the dealer's inventory on the effective date of the termination until those recreational
 23 vehicles are no longer in the dealer's inventory.

24 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO
 25 READ AS FOLLOWS:

26 (1) All of the following conditions shall apply to a proposed sale of the business
 27 assets, transfer of stock, or other transaction that will result in a change of

ownership of a new recreational vehicle dealer, except a transaction described in subsection (2) of this section:

(a) The dealer shall provide written notice to the manufacturer at least ninety (90) days prior to the proposed closing of the transaction;

(b) If the dealer is not in breach of the dealer agreement or in violation of the provisions of this chapter at the time the dealer provides the notice described in paragraph (a) of this subsection, the manufacturer shall not object to the proposed transaction, unless:

1. The prospective transferee was previously a party to a dealer agreement with the manufacturer that the manufacturer terminated;

2. In the proceeding ten (10) years, the prospective transferee was convicted of a felony crime or any crime of fraud, deceit, or moral turpitude;

3. The prospective transferee does not have an application for a recreational vehicle dealer license pending with the Motor Vehicle Commission or a tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state relative to the sale or transfer of the dealership;

4. The prospective transferee does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer according to the terms of the dealer agreement; or

5. In the preceding ten (10) years, the prospective transferee was bankrupt or insolvent, made a general assignment for the benefit of creditors, or a receiver, trustee, or conservator was appointed to take possession of the business or property of the prospective transferee;

(c) If the manufacturer objects to the proposed transaction, the manufacturer shall give written notice of its objection including the reasons for the

objection to the dealer within thirty (30) days after receiving the notice described in paragraph (a) of this subsection. If the manufacturer does not give notice of an objection within the thirty (30) day time period, the proposed transaction shall be considered approved by the manufacturer; and

(d) For purposes of paragraph (c) of this subsection, the manufacturer has the burden of demonstrating why the manufacturer objects to the proposed transaction.

(2) All of the following conditions apply concerning the death, incapacity, or retirement of the designated principal of a dealer:

(a) A dealer agreement shall include a designated principal of the dealer. A dealer agreement may identify a family member as the successor to the principal in the event of the death, incapacity, or retirement of the designated principal or include a succession plan of the dealer. A dealer may at any time change a designation or succession plan by providing written notice to the manufacturer;

(b) The manufacturer shall not prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal of that dealer unless the manufacturer previously provided written notice to the dealer of any objections to the succession plan of the dealer within thirty (30) days after receiving the succession plan of the dealer or any modification of the succession plan of the dealer;

(c) Except as provided in paragraph (e) of this subsection, unless the dealer is in breach of the dealer agreement, a manufacturer shall not object to the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal, unless:

1. In the preceding ten (10) years, the successor was convicted of a

felony crime or any crime of fraud, deceit, or moral turpitude;

2. In the preceding ten (10) years, the successor was bankrupt, insolvent, or made an assignment for the benefit of creditors;

3. The successor was previously a party to a dealer agreement with the manufacturer that the manufacturer terminated for a breach of a dealer agreement;

4. The successor does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer according to the terms of the dealer agreement; or

5. The successor does not have an application for a recreational vehicle dealer license pending before the Motor Vehicle Commission or a tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;

(d) The manufacturer has the burden of proof regarding any objection to the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal; and

(e) The consent of the manufacturer shall be required for the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal if the succession involves a relocation of the business or an alteration of the terms and conditions of the dealer agreement.

→ SECTION 8. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

(1) A warrantor has all the following obligations to each new recreational vehicle dealer engaged in the sale of products that are covered by a warranty from that warrantor:

(a) To specify in writing to the dealer the obligations of the dealer, if any, for preparation, delivery, and warranty service on its products;

1 (b) To compensate the dealer for warranty service required of the dealer by the
 2 warrantor;

3 (c) To provide the dealer with a schedule of compensation the warrantor will
 4 pay for warranty work and service, and the time allowances of the
 5 warrantor for the performance of that work and service. All of the following
 6 conditions apply to the schedule of compensation required under this
 7 paragraph:

8 1. Time allowances for the diagnosis and performance of warranty labor
 9 shall be reasonable for the work to be performed;

10 2. In the determination of what constitutes reasonable compensation
 11 under this section, the principal factors to be considered are the actual
 12 wage rates paid by the dealer, and the actual retail labor rate charged
 13 by dealers in the community in which the dealer is doing business;
 14 and

15 3. The compensation of a dealer for warranty labor may not be less than
 16 the lowest retail labor rates actually charged by the dealer for like
 17 non-warranty labor, as long as those rates are reasonable;

18 (d) To reimburse the dealer for any warranty part, accessory, or complete
 19 component at actual wholesale cost plus a minimum thirty percent (30%)
 20 handling charge up to a maximum of one hundred fifty dollars (\$150) and
 21 the cost, if any, of freight to return such parts, components, or accessories
 22 to the warrantor; and

23 (e) To deny dealer claims for warranty compensation only for cause, including
 24 but not limited to performance of nonwarranty repairs, material
 25 noncompliance with the published policies and procedures of the warrantor,
 26 lack of material documentation of claims, fraud, or misrepresentation.

27 (2) A warrantor may conduct audits of the records of a dealer that sells its warranted

1 products on a reasonable basis.

2 (3) A dealer shall submit warranty claims to a warrantor within forty-five (45) days
 3 after completing all warranty work on a warranted product.

4 (4) A dealer is not obligated to store defective warranty parts for more than thirty
 5 (30) days from the time the warranty work is paid by the warrantor, if the
 6 defective parts, components, or accessories are not immediately returned to the
 7 warrantor.

8 (5) A dealer shall immediately notify the warrantor in writing if the dealer is unable
 9 to perform any warranty repair within ten (10) days of receipt of a written
 10 complaint from a consumer.

11 (6) A warrantor shall approve or disapprove a warranty claim on a warranted
 12 product in writing within thirty (30) days after the date the dealer submits the
 13 claim, if the claim is submitted in the manner and in the form prescribed by the
 14 warrantor. If a claim that is properly submitted is not specifically disapproved in
 15 writing by a warrantor within the thirty (30) day time period, the claim shall be
 16 considered approved by the warrantor, and the warrantor shall pay the amount of
 17 the claim to the dealer within sixty (60) days after the dealer submitted the claim.

18 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) As used in this section and Section 8 of this Act:

21 (a) "Products" means new recreational vehicles or parts, accessories, or
 22 components of new recreational vehicles; and

23 (b) "Warranted products" means products subject to a written warranty to the
 24 consumer from a specific warrantor.

25 (2) A warrantor shall not do any of the following:

26 (a) Fail to perform all of its warranty obligations with respect to a warranted
 27 product;

1 (b) In any written notice of a factory campaign to recreational vehicle owners
 2 and dealers, fail to include the expected date by which necessary parts and
 3 equipment, including tires and chassis or chassis parts, if required, will be
 4 available to the dealer to perform the factory campaign work. The
 5 warrantor shall provide sufficient parts to the dealer to perform the factory
 6 campaign work. If the number of parts provided to the dealer pursuant to
 7 this paragraph exceeds the requirements of the dealer to perform the factory
 8 campaign work, the dealer may return unused, undamaged, parts to the
 9 warrantor for credit after completion of the factory campaign;

10 (c) Subject to the provisions of Section 8 of this Act, fail to compensate a dealer
 11 for authorized repairs of warranted products damaged during the
 12 manufacturing process or damaged while in transit to the dealer if the
 13 warrantor selected the carrier;

14 (d) Fail to compensate a dealer for authorized warranty service under this
 15 section in accordance with the applicable schedule of compensation
 16 provided to the dealer pursuant to Section 8 of this Act if the warranty
 17 service is performed in a timely and competent manner;

18 (e) Intentionally misrepresent in any way to a purchaser of a warranted
 19 product that any warranty concerning the manufacture, performance, or
 20 design of the warranted product is made by the dealer either as a warrantor
 21 or co-warrantor; or

22 (f) Require a dealer to make warranties to customers in any manner related to
 23 the manufacture of a warranted product.

24 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 190A IS CREATED
 25 TO READ AS FOLLOWS:

26 A recreational vehicle dealer shall not do any of the following:

27 (1) Fail to perform any warranty service work authorized by a warrantor in a

1 reasonably competent and timely manner if a transient customer requests service
 2 work on a recreational vehicle of a line-make that the dealer is authorized to
 3 display and sell;

4 (2) Make a fraudulent warranty claim to a warrantor;

5 (3) Misrepresent the terms of any warranty;

6 (4) Fail to perform any pre-delivery inspection functions as specified by the
 7 warrantor in a competent and timely manner;

8 (5) Fail to accurately document the time spent completing each repair, the total
 9 number of repair attempts conducted on a single recreational vehicle, and the
 10 number of repair attempts for the same repair conducted on a single recreational
 11 vehicle;

12 (6) Fail to notify the warrantor within ten (10) days subsequent to the second repair
 13 attempt on a defect which impairs the use, value, or safety of a recreational
 14 vehicle; or

15 (7) Fail to maintain written records, including a customer's signature, regarding the
 16 amount of time a recreational vehicle is stored for the consumer's convenience
 17 during a repair.

18 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 190A IS CREATED
 19 TO READ AS FOLLOWS:

20 Notwithstanding the terms of any manufacturer-dealer agreement, it is a violation of
 21 this chapter for:

22 (1) A warrantor to fail to indemnify and hold harmless its new recreational vehicle
 23 dealer against any losses or damages to the extent that the losses or damages are
 24 caused by the negligence or willful misconduct of the warrantor. A new
 25 recreational vehicle dealer may not be denied indemnification for failing to
 26 discover, disclose, or remedy a defect in the design or manufacturing of a new
 27 recreational vehicle. A new recreational vehicle dealer may be denied

indemnification if the new recreational vehicle dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the new recreational vehicle dealer is obligated to perform warranty service. A new recreational vehicle dealer shall provide to a warrantor a copy of any pending lawsuit in which allegations are made that are covered by the provisions of this subsection within ten (10) days after receiving such suit. Notwithstanding anything to the contrary, this paragraph shall continue to apply even after the new recreational vehicle is titled; or

(2) A new recreational vehicle dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the new recreational vehicle dealer. A warrantor shall provide to a new recreational vehicle dealer a copy of any pending lawsuit or similar proceeding in which allegations are made that come within the provisions of this subsection within ten (10) days after receiving such suit. Notwithstanding anything to the contrary, this paragraph shall continue to apply even after the new recreational vehicle is titled.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

(1) All of the following conditions apply if a new recreational vehicle is damaged before it is shipped to a dealer, or is damaged in transit to the dealer and the manufacturer selected the carrier or means of transportation:

(a) The dealer shall notify the manufacturer of the damage within the time period specified in the dealer agreement and do one of the following:

1. In the notice, request authorization from the manufacturer to replace the components, parts, and accessories damaged, or otherwise correct the damage; or

2. Reject the recreational vehicle within the time period specified in the

dealer agreement;

(b) If the manufacturer refuses or fails to authorize repair of the damage within ten (10) days after receiving notice under paragraph (a) of this subsection or if the dealer rejects the recreational vehicle because of the damage within the time period specified in the dealer agreement, ownership of the recreational vehicle reverts to the manufacturer; and

(c) The dealer shall exercise due care in the custody of the damaged recreational vehicle; provided, the dealer shall have no financial or other obligation with respect to that recreational vehicle.

(2) A dealer agreement shall include a time period for inspection and rejection of damaged recreational vehicles under subsection (1) of this section that is not less than two (2) business days after the physical delivery of the recreational vehicles to the dealer.

(3) If the number of miles on the odometer of the recreational vehicle is more than the sum of the distance between the dealer and the factory of the manufacturer or point of distribution plus one hundred (100) miles, the dealer may consider the number of miles on the odometer unreasonable for purposes of this subsection. If a dealer determines that a new recreational vehicle has an unreasonable number of miles on the odometer at the time the recreational vehicle is delivered to the dealer, the dealer may reject the recreational vehicle and the ownership of the recreational vehicle shall revert to the manufacturer.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, the term "coerce" includes but is not limited to:

(a) Threatening to terminate or not renew a dealer agreement without good cause; and

(b) Threatening to withhold line-makes or other product lines the dealer is

entitled to display and sell under the dealer agreement or delay delivery of recreational vehicles as an inducement to amend the dealer agreement.

(2) A recreational vehicle manufacturer shall not coerce or attempt to coerce a dealer to purchase a product or service that the dealer did not order.

(3) A recreational vehicle manufacturer shall not coerce a dealer to enter into any agreement with the manufacturer.

(4) A recreational vehicle manufacturer shall not coerce or attempt to coerce a dealer to enter into an agreement with the manufacturer or any other person that requires the dealer to submit any disputes by the dealer to binding arbitration or otherwise waive the rights or responsibilities of the dealer under the provisions of this chapter.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 190A IS CREATED TO READ AS FOLLOWS:

Any person who violates or causes, aids, or abets any violation of any provision of this chapter shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned for not more than thirty (30) days, or both.

➔Section 15. KRS 190.010 is amended to read as follows:

As used in this chapter:

(1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:

(a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who

1 maintains factory representatives, or who controls any person, firm,
2 association, corporation, or trust, resident or nonresident, who in whole or in
3 part offers for sale, sells, or distributes any new motor vehicle to new motor
4 vehicle dealers;

5 (b) "Factory branch" which means a branch office maintained by a manufacturer
6 for the purpose of selling, or offering for sale, new motor vehicles to a
7 distributor, wholesaler, or new motor vehicle dealer, or for directing or
8 supervising, in whole or in part, factory or distributor representatives, and
9 shall further include any sales promotion organization, whether the same be a
10 person, firm, or corporation, which is engaged in promoting the sale of new
11 motor vehicles in this state of a particular brand or make to new motor vehicle
12 dealers;

13 (c) "Factory representative" which means a representative employed by a
14 manufacturer, distributor, or factory branch for the purpose of making or
15 promoting for the sale of his, its, or their new motor vehicles, or for
16 supervising or contracting with his, its, or their dealers, or prospective dealers;

17 (d) "Distributor branch" which means a branch office similarly maintained by a
18 distributor or wholesaler for the same purposes; and

19 (e) "Distributor representative" which means a representative similarly employed
20 by a distributor, distributor branch, or wholesaler;

21 (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this
22 section, engaged in the business of selling, offering to sell, soliciting, or advertising
23 the same, of new or used motor vehicles, or possessing motor vehicles for the
24 purpose of resale, either on his own account, or on behalf of another, either as his
25 primary business or incidental thereto;

26 (3) The term "motor vehicle dealer" shall not include:

27 (a) Receivers, trustees, administrators, executors, guardians, or other persons

- 1 appointed by or acting under the judgment or order of any court, and any bank,
2 trust company, or lending institution that is subject to state or federal
3 regulation, with regard to its disposition of repossessed motor vehicles;
- 4 (b) Public officers while performing their official duties; or
- 5 (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection,
6 when engaged in the specific performance of their duties as employees;
- 7 (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and
8 service agreement, franchise, or contract, granted by the manufacturer, distributor,
9 or wholesaler for the sale of the manufacturer's new motor vehicles;
- 10 (5) "New motor vehicle dealership facility" means an established place of business
11 which is being used or will be used primarily for the purpose of selling, buying,
12 displaying, repairing, and servicing motor vehicles;
- 13 (6) "Used motor vehicle dealer" means any person engaged in the business of selling at
14 retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not
15 mean any person engaged in the business of dismantling, salvaging, or rebuilding
16 motor vehicles by means of using used parts, or any public officer performing his
17 official duties;
- 18 (7) "Motor vehicle leasing dealer" means any person engaged in the business of
19 regularly making available, offering to make available, or arranging for another
20 person to use a motor vehicle pursuant to a bailment, lease, or other contractual
21 arrangement under which a charge is made for its use at a periodic rate for at least a
22 monthly term, and title to the motor vehicle is in a person other than the user, but
23 shall not mean a manufacturer or its affiliate leasing to its employees or to dealers;
- 24 (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively
25 sells, offers to sell, solicits, or advertises specialized motor vehicles including, but
26 not limited to, funeral coaches, emergency vehicles, and an automotive recycling
27 dealer engaged in the business of dismantling, salvaging, or recycling salvage motor

1 vehicles for the purpose of harvesting used parts, components, assemblies, and
 2 recyclable materials for resale, reuse, or reclamation;

3 (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to
 4 sell, solicits, or advertises motorcycles, including alternative-speed motorcycles as
 5 defined in KRS 186.010. Motorcycles shall not include mopeds as defined in this
 6 section;

7 (10) "Motor vehicle salesperson" means any person who is employed as a salesperson by
 8 a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer
 9 by a motor vehicle auction dealer to sell motor vehicles at auction;

10 (11) "Motor vehicle auction dealer" means any person primarily engaged in the business
 11 of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a
 12 motor vehicle through auction;

13 (12) "Motor vehicle" means every vehicle intended primarily for use and operation on
 14 the public highways that is self-propelled including low-speed motor vehicles as
 15 defined in KRS 186.010, but shall not include any recreational vehicle or farm
 16 tractors and other machines and tools used in the production, harvesting, and care of
 17 farm products;

18 (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer,
 19 distributor, or wholesaler, or has been sold to the holders of a valid sales and service
 20 agreement, franchise, or contract, granted by the manufacturer, distributor, or
 21 wholesaler for the sale of the make of new vehicle, which is new, and on which the
 22 original title has not been issued from the franchised dealer;

23 (14) "Moped" means a motorized bicycle with pedals whose frame design may include
 24 one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle
 25 with pedals and with a step through type frame rated no more than two (2) brake
 26 horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an
 27 automatic transmission not requiring clutching or shifting by the operator after the

1 drive system is engaged, and capable of a maximum speed of not more than thirty
2 (30) miles per hour;

3 (15) "Commission" means the Motor Vehicle Commission;

4 (16) "Commissioner" means the commissioner of the department;

5 (17) "Department" means the Department of Vehicle Regulation;

6 (18) "Licensor" means the commission;

7 (19) "Established place of business" means a permanent, enclosed commercial building
8 located within this state, easily accessible and open to the public at all reasonable
9 times, and at which the business of a vehicle dealer, including the display and repair
10 of vehicles, may be lawfully carried on in accordance with the terms of all
11 applicable building codes, zoning, and other land use regulatory ordinances;

12 (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or
13 other legal entity;

14 (21) "Franchise" means the agreement or contract between any new motor vehicle
15 manufacturer, written or otherwise, and any new motor vehicle dealer that purports
16 to fix the legal rights and liabilities of the parties to an agreement or contract, and
17 pursuant to which the dealer purchases and resells the franchise product;

18 (22) "Good faith" means honesty in fact, and the observance of reasonable commercial
19 standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-
20 103(1)(b);

21 (23) "Designated family member" means the spouse, child, grandchild, parent, brother,
22 or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the
23 dealer's ownership interest in the dealership under the terms of the dealer's will; or
24 who has otherwise been designated in writing by a deceased dealer to succeed him
25 in the motor vehicle dealership; or who, under the laws of intestate succession of
26 this state is entitled to inherit the interest; or who, in the case of an incapacitated
27 dealer, has been appointed by a court as the legal representative of the dealer's

1 property. The term includes the appointed and qualified personal representative and
 2 testamentary trustee of a deceased dealer;

3 (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or
 4 due to gross negligence, of a material fact; a promise or representation not made in
 5 good faith; or an intentional failure to disclose material fact;

6 (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, lease, pledge,
 7 hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of
 8 any motor vehicle or interest in it, or of any franchise related to it, as well as any
 9 option, subscription, other contract, or solicitation looking to a sale, offer to attempt
 10 to sell in any form, whether spoken or written. A gift or delivery of any motor
 11 vehicle or franchise with respect thereto, with or as a bonus on account of the sale
 12 of anything, shall be deemed a sale of the motor vehicle or franchise;

13 (26) "Automotive mobility dealer" means any motor vehicle dealer who:

14 (a) Exclusively engages in the business of selling, offering to sell, or soliciting or
 15 advertising the sale of adapted vehicles;

16 (b) Possesses adapted vehicles exclusively for the purpose of resale, either on his
 17 or her own account or on behalf of another, as his or her primary business or
 18 incidental thereto; or

19 (c) Engages in the business of selling, installing, or servicing; offering to sell,
 20 install, or service; or soliciting or advertising the sale, installation, or servicing
 21 of equipment or modifications specifically designed to facilitate use or
 22 operation of a motor vehicle by an aging or disabled person;

23 (27) "Adapted vehicle" means a new or used motor vehicle especially designed or
 24 modified for use by an aging or disabled person;

25 (28) "Mobility equipment" means equipment specifically designed to facilitate the use of
 26 a motor vehicle by an aging or disabled person;

27 (29) "Nonprofit motor vehicle dealer" means a nonprofit organization exempt from

1 taxation under Section 501(c)(3) of the Internal Revenue Code that purchases motor
 2 vehicles that it may offer for purchase to clients and other individuals who meet the
 3 definition of client as defined in this section and who are referred to the
 4 organization by public or private social service agencies;~~and~~

5 (30) "Client" means a person who has an open case file with a nonprofit organization or
 6 governmental agency and who meets the standards for disability or disadvantaging
 7 condition as established in administrative regulations promulgated by the
 8 commission pursuant to KRS 190.032(4);

9 (31) "Recreational vehicle" means a vehicle that:

10 (a) Is primarily designed as temporary living quarters for noncommercial
 11 recreation or camping use;

12 (b) Has its own motive power or is towed by another vehicle;

13 (c) Is regulated by the National Highway Traffic Safety Administration as a
 14 vehicle; and

15 (d) Does not require a special highway use permit; and

16 (32) "New recreational vehicle dealer" means a new recreational vehicle dealer as
 17 defined in Section 1 of this Act.

18 ➔Section 16. KRS 190.030 is amended to read as follows:

19 (1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, nonprofit motor
 20 vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer,
 21 motorcycle dealer, broker, wholesaler, automotive recycling dealer, new
 22 recreational vehicle dealer,~~or~~ a salesperson of motor vehicles, or a salesperson of
 23 new recreational vehicles shall not engage in business in this state at any location
 24 without a license issued for that location as provided in KRS 190.010 to 190.080. If
 25 a person acts as a motor vehicle salesperson or a new recreational vehicle
 26 salesperson, he shall secure a motor vehicle salesperson's license or a new
 27 recreational vehicle salesperson's license in addition to a license for a motor

- 1 vehicle dealer or for a new recreational vehicle dealer. The motor vehicle
 2 commission may provide by administrative regulation for other licensee activities
 3 and an appropriate fee.
- 4 (2) A manufacturer of motor vehicles, recreational vehicles, factory branch, distributor,
 5 distributor branch, or wholesaler shall not engage in business in this state without a
 6 license as provided in KRS 190.010 to 190.080.
- 7 (3) A factory representative or distributor representative shall not engage in business in
 8 this state without a license as provided in KRS 190.010 to 190.080.
- 9 (4) Application for license shall be made to the licensor, at a time, in a form, and
 10 containing information the licensor shall require and shall be accompanied by the
 11 required fee. The licensor may require in the application, or otherwise, information
 12 relating to the applicant's solvency, his financial standing, or other pertinent matter
 13 commensurate with the safeguarding of the public interest in the locality in which
 14 the applicant proposes to engage in business. The information may be considered by
 15 the licensor in determining the fitness of the applicant to engage in business as set
 16 forth in this section.
- 17 (5) All licenses shall be granted or refused within thirty (30) days after submission of a
 18 complete application and shall expire, unless revoked or suspended, on December
 19 31 of the calendar year for which they are granted. If a complaint of unfair
 20 cancellation of dealer franchise is in the process of being heard, a replacement
 21 application for the franchise shall not be considered until a decision is rendered by
 22 the commission.
- 23 (6) The license fee for a calendar year, or part thereof, shall be as follows:
- 24 (a) For new motor vehicle dealers, one hundred dollars (\$100) for each office or
 25 branch or agent thereof, plus one hundred dollars (\$100) for a supplemental
 26 license for each used car lot not immediately adjacent to the office or to a
 27 branch;

- 1 (b) For used motor vehicle dealers, one hundred dollars (\$100) for each office or
2 branch or agent thereof;
- 3 (c) For motor vehicle leasing dealers, one hundred dollars (\$100) for each office
4 or branch or agent thereof;
- 5 (d) For restricted motor vehicle dealers, one hundred dollars (\$100) for each
6 office or branch or agent thereof;
- 7 (e) For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or
8 agent thereof;
- 9 (f) For motor vehicle manufacturers, one hundred dollars (\$100); and for each
10 factory branch in this state, one hundred dollars (\$100);
- 11 (g) For distributors, motor vehicle auction dealers or wholesalers, the same as for
12 dealers;
- 13 (h) For motor vehicle or recreational vehicle salespersons, twenty dollars (\$20),
14 to be paid by the licensed dealer for every salesperson the dealer employs;
- 15 (i) For factory representatives, or distributor branch representatives, one hundred
16 dollars (\$100);
- 17 (j) For automotive mobility dealers, one hundred dollars (\$100);
- 18 (k) For nonprofit motor vehicle dealers, one hundred dollars (\$100);~~and~~
- 19 (l) For nonprofit motor vehicle dealer salespersons, a license fee shall not be
20 imposed;
- 21 (m) For recreational vehicle manufacturers or distributors, one hundred dollars
22 (\$100); and
- 23 (n) For new recreational vehicle dealers, one hundred dollars (\$100).
- 24 (7) (a) The licenses of dealers, manufacturers, factory branches, distributors, and
25 distributor branches shall specify the location of the office or branch and shall
26 be conspicuously displayed there. If the location is changed, the licensor shall
27 endorse the change of location on the license. A licensee shall not be charged

a fee for changing locations. A change of location shall require a new application.

(b) 1. A motor vehicle dealer who is not a new motor vehicle dealer^[licensee] may conduct a temporary sale or display **in the county where the dealer is licensed to conduct business.**

2. A new motor vehicle dealer may conduct a temporary sale or display in the dealer's market as defined in KRS 190.047(6).

3. A recreational vehicle dealer may conduct a temporary sale or display in the county where the dealer is licensed to conduct business or in any other county where there is no licensed recreational vehicle dealer.

(c) A temporary sale or display may be conducted under paragraph (b) of this section if the temporary sale or display is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. A temporary sale or display shall be advertised as temporary in nature and shall consist of a representative sampling of the inventory of each participating licensee.

(d) The provisions of this subsection shall not apply to a nonprofit motor vehicle dealer.

(8) Every salesperson, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the salesperson shall immediately mail his license to the licensor who shall endorse the change on the license without charge.

(9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the

1 licensor may require the applicant or licensee to furnish and maintain a bond in a
 2 form, amount and with sureties not less than fifteen thousand dollars (\$15,000),
 3 conditioned upon the applicant or licensee complying with the provisions of the
 4 statutes applicable to the licensee. The bonds shall be executed in the name of the
 5 State of Kentucky for the benefit of any aggrieved parties, but the penalty of the
 6 bond shall not be invoked except after a court adjudication. The commission may
 7 promulgate administrative regulations to permit the applicant to submit evidence, in
 8 lieu of posting bond, that reliable financial arrangements, deposits, or commitments
 9 exist providing assurance, substantially equivalent to that afforded by a bond
 10 complying with this subsection, for payment on conditions and indemnity set forth
 11 in this subsection. The bonding requirements of this subsection shall not apply to
 12 manufacturers, factory branches, and their agents.

13 (10) Application for dealer's license shall be submitted to the commission and contain
 14 information the commission may require. A motor vehicle dealer, unless licensed
 15 under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use
 16 any motor vehicle registration plates.

17 (11) Every motor vehicle dealer or new recreational vehicle dealer licensed in
 18 accordance with the provisions of this section shall make reports to the licensor at
 19 intervals and show information the licensor may require.

20 ➔Section 17. KRS 190.033 is amended to read as follows:

21 A motor vehicle dealer's license, new recreational vehicle dealer's license, motor vehicle
 22 auction dealer's license, or wholesaler's license shall not be issued or renewed unless the
 23 applicant or holder of the license shall have on file with the commission an approved
 24 indemnifying bond or insurance policy issued by a surety company or insurance carrier
 25 authorized to transact business within the Commonwealth of Kentucky. The term of the
 26 bond or policy shall be continuous and shall remain in full force until canceled under
 27 proper notice. All bonds or policies shall be issued in the name of the holder or applicant

1 for the dealer's license or wholesaler's license. The bond or policy for all dealers except
 2 automotive recycling dealers shall provide public liability and property damage coverage
 3 for the operation of any vehicle owned or being offered for sale by the dealer or
 4 wholesaler when being operated by the owner or seller, his agents, servants, employees,
 5 prospective customers, or other persons. In circumstances where a customer's or other
 6 person's vehicle is out of use because of breakdown, repair, or servicing and a motor
 7 vehicle is loaned, with or without consideration, the coverage mandated by this section
 8 shall be in excess of, and be deemed secondary to, the collision, bodily injury, and
 9 property damage liability coverage under a customer's or other person's own coverage for
 10 that person's own negligence; otherwise the coverage mandated by this section shall be
 11 primary. The amount of insurance shall be one hundred thousand dollars (\$100,000) for
 12 bodily injury or death of any one (1) person; three hundred thousand dollars (\$300,000)
 13 for bodily injury or death in any one (1) accident; and fifty thousand dollars (\$50,000)
 14 property damage. The bond or policy for automotive recycling dealers shall provide
 15 commercial general liability coverage in the amount of one hundred thousand dollars
 16 (\$100,000) for bodily injury or death of any one (1) person; three hundred thousand
 17 dollars (\$300,000) for bodily injury or death in any one (1) accident; and fifty thousand
 18 dollars (\$50,000) property damage. A bond or insurance policy shall not be canceled
 19 unless fifteen (15) days' notice by the bondsman or insurance carrier has been given in
 20 writing to the commission. Upon the cancellation of any bond or insurance policy
 21 required, the right to engage in the business of a motor vehicle dealer or wholesaler shall
 22 immediately abate. If the bond or insurance policy is reinstated within thirty (30) days
 23 from the date of cancellation, the rights granted by the license shall again be in force and
 24 effect; otherwise, the license shall become void.

25 ➔Section 18. KRS 190.035 is amended to read as follows:

26 (1) Except as provided in subsection (2) of this section, a license shall not be issued by
 27 the commission for the purposes described in KRS 190.030(1) and to motor vehicle

1 dealers or new recreational vehicle dealers, either as dealer or salesman, unless the
 2 applicant for the license has an established place of business as defined in KRS
 3 190.010, or for recreational vehicles as defined in Section 1 of this Act, and as
 4 provided by regulation of the commission consistent with the activity of the license
 5 applied for. A licensee may conduct more than one (1) business in a building
 6 otherwise meeting the requirements of this chapter providing he has suitable space
 7 and adequate facilities therein to properly conduct the business of a motor vehicle
 8 dealer. The lot requirement of this section may be waived if the dealer has sufficient
 9 space within a building to properly show and display the motor vehicles or new
 10 recreational vehicles being sold by him. The dealer shall display a sign easily
 11 visible from the street identifying his business.

12 (2) The provisions of this section shall not apply to a nonprofit motor vehicle dealer.

13 ➔Section 19. KRS 190.040 is amended to read as follows:

14 (1) A license may be denied, suspended, or revoked on the following grounds:

- 15 (a) Proof of financial or moral unfitness of applicant;
- 16 (b) Material misstatement in application for license;
- 17 (c) Filing a materially false or fraudulent tax return as certified by the Department
 18 of Revenue;
- 19 (d) Willful failure to comply with any provision of this chapter or any
 20 administrative regulation promulgated under this chapter;
- 21 (e) Willfully defrauding any retail buyer to the buyer's damage;
- 22 (f) Willful failure to perform any written agreement with any buyer;
- 23 (g) Failure or refusal to furnish and keep in force any bond required;
- 24 (h) Having made a fraudulent sale, transaction, or repossession;
- 25 (i) False or misleading advertising;
- 26 (j) Fraudulent misrepresentation, circumvention, or concealment through
 27 subterfuge or device of any of the material particulars or the nature of them

- 1 required to be stated or furnished to the retail buyer;
- 2 (k) Employment of fraudulent devices, methods, or practices in connection with
 3 compliance with the requirements under the statutes of this state with respect
 4 to the retaking of goods under retail installment contracts and the redemption
 5 and resale of goods;
- 6 (l) Having violated any law relating to the sale, distribution, or financing of
 7 motor vehicles or new recreational vehicles;
- 8 (m) Being a manufacturer of motor vehicles, recreational vehicles, factory branch,
 9 distributor, field representative, officer, agent, or any representative of the
 10 motor vehicle manufacturer, recreational vehicle manufacturer, or factory
 11 branch, who has induced, coerced, or attempted to induce or coerce any
 12 automobile dealer or new recreational vehicle dealer to accept delivery of
 13 any motor vehicle, new recreational vehicle, vehicles, parts, accessories, or
 14 any other commodities that shall not have been ordered by the dealer;
- 15 (n) Being a manufacturer of motor vehicles, recreational vehicles, factory branch,
 16 distributor, field representative, officer, agent, or any representative of a motor
 17 vehicle manufacturer or factory branch, who has attempted to induce or
 18 coerce, or has induced or coerced, any {automobile} dealer to enter into any
 19 agreement with a manufacturer, factory branch, or representative, or to do any
 20 other act unfair to the dealer, by threatening to cancel any franchise existing
 21 between a manufacturer, factory branch, or representative and the dealer;
- 22 (o) Being a manufacturer, factory branch, distributor, field representative, officer,
 23 agent, or any representative of a motor vehicle manufacturer or factory branch,
 24 who has unfairly, without due regard to the equities of the dealer and without
 25 just provocation, canceled the franchise of any motor vehicle dealer. The
 26 nonrenewal of a franchise or selling agreement without just provocation or
 27 cause shall be deemed an evasion of this section and shall constitute an unfair

1 cancellation;

2 (p) Being a manufacturer, factory branch, distributor, field representative, officer,
 3 agent, or any representative of a motor vehicle manufacturer, recreational
 4 vehicle manufacturer, or factory branch, or wholesaler who makes, attempts
 5 to make, or aids or abets the making of a sale of a motor vehicle or a new
 6 recreational vehicle to a person other than a licensed motor vehicle dealer or
 7 new recreational vehicle dealer. This section shall not prevent any
 8 manufacturer from offering discounts or rebates on any motor vehicle or new
 9 recreational vehicle to any of its employees; or

10 (q) Being a dealer who advertises for sale a new motor vehicle or new
 11 recreational vehicle unless he is a dealer operating under a franchise with a
 12 licensed manufacturer, factory branch, or distributor authorizing the sale of
 13 the new motor vehicle or the new recreational vehicle being advertised.

14 (2) The licensor may deny the application for a license within thirty (30) days after
 15 receipt thereof by written notice to the applicant, stating the grounds for denial.
 16 Upon request by the applicant whose license has been denied, the licensor shall set
 17 the time and place of hearing a review of denial, to be conducted in accordance with
 18 KRS Chapter 13B.

19 (3) A license shall not be suspended or revoked except after a hearing conducted in
 20 accordance with KRS Chapter 13B.

21 (4) The commission may inspect the pertinent books, letters, records, and contracts of a
 22 licensee.

23 (5) If a licensee is a firm or corporation, it shall be sufficient cause for the denial,
 24 suspension, or revocation of a license that any officer, director, or trustee of the firm
 25 or corporation, or any member in case of a partnership, has been guilty of any act or
 26 omission which would be cause for refusing, suspending, or revoking a license to
 27 the party as an individual. Each licensee shall be responsible for the acts of any or

1 all of his salesmen while acting as his agent, if the licensee approved of or had
 2 knowledge of the acts and after approval or knowledge retained the benefit,
 3 proceeds, profits, or advantages accruing from the acts.

4 (6) Any licensee or other person in interest who is dissatisfied with a final order of the
 5 commission may appeal to the Franklin Circuit Court and to the Court of Appeals in
 6 the manner provided by KRS Chapter 13B.

7 ➔Section 20. KRS 190.062 is amended to read as follows:

8 (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise,
 9 or the terms or provisions of any waiver, any person who is injured in his business
 10 or property by a violation of this section or any person so injured because he refuses
 11 to accede to a proposal for an arrangement which, if consummated, would be in
 12 violation of this section, may bring a civil action in the Franklin Circuit Court to
 13 enjoin further violations, to recover the actual damages sustained by him, together
 14 with costs of the suit, including a reasonable attorney's fee.

15 (2) The commission may order, deny, suspend, or revoke the license of any new motor
 16 vehicle dealer, new recreational vehicle dealer, manufacturer, distributor, factory
 17 branch, or factory representative for failing to comply with any provisions of KRS
 18 190.010 to 190.080 or Sections 1 to 14 of this Act, as such provisions apply,
 19 respectively, to new motor vehicle dealers, new recreational vehicle dealers,
 20 manufacturers, distributors, factory branches, or factory representatives; or in
 21 lieu thereof, or in addition thereto, may assess monetary penalties of a civil nature
 22 not to exceed one thousand dollars (\$1,000) for each violation.

23 (3) The provisions of KRS 190.010 to 190.080 and Sections 1 to 14 of this Act, as
 24 such provisions apply, respectively, to new motor vehicle dealers, new
 25 recreational vehicle dealers, manufacturers, distributors, factor branches, or
 26 factory representatives, shall apply to all persons required to be licensed under the
 27 terms herein, and to dealerships and contracts between new motor vehicle dealers,

1 new recreational vehicle dealers, and manufacturers, distributors, factory branches,
 2 or factory representatives at the time of its passage, and to all such future new motor
 3 vehicle dealerships and contracts.

4 (4) (a) In addition to the provisions of this section, before a civil action involving
 5 recreational vehicle franchise issues is brought, the party bringing suit for
 6 an alleged violation of this chapter shall serve a written demand for
 7 mediation on the offending party. The demand for mediation shall include
 8 a brief statement of the dispute and the relief sought by the party making
 9 the demand. The party making the demand shall serve the demand by
 10 certified mail to one (1) of the following addresses:

11 1. In an action between a new recreational vehicle dealer and a
 12 manufacturer, the address stated in the dealer agreement between the
 13 parties;

14 2. In an action between a new recreational vehicle dealer and a
 15 warrantor that is not a manufacturer, the address stated in any
 16 agreement between the parties; or

17 3 In an action between two (2) new recreational vehicle dealers, the
 18 address of the offending dealer in the records of the commission.

19 (b) Within twenty (20) days after a demand for mediation is served under this
 20 subsection, the parties shall mutually select an independent mediator who is
 21 approved by the commission and meet with that mediator for the purpose of
 22 attempting to resolve the dispute at a location in this state selected by the
 23 mediator. The mediator may extend the date of the meeting for good cause
 24 shown by either party or if the parties agree to the extension.

25 (c) The service of a demand for mediation under this subsection tolls the time
 26 for the filing of any complaint, petition, protest, or other action under this
 27 chapter until representatives of both parties have met with the mediator

selected pursuant to paragraph (b) of this subsection for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, if all the parties to the proceeding or action stipulate in writing that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the court considers appropriate.

(d) Each of the parties to the mediation under this subsection is responsible for its own attorney fees. The parties shall equally divide the cost of the mediator.

➔ Section 21. KRS 190.090 is amended to read as follows:

As used in KRS 190.090 to 190.140, unless the context or subject matter otherwise requires:

- (1) "Person" means an individual, partnership, corporation, association, and any other group however organized;
- (2) "Retail installment sale" means any sale for other than agricultural, business, or commercial use evidenced by a retail installment contract wherein retail buyer agrees to buy and retail seller agrees to sell a motor vehicle at a time sale price payable in two (2) or more installments. The cash sale price of the motor vehicle, the amount, if any, included for insurance and other benefits, official fees and the finance charge, shall together constitute the time sale price;
- (3) "Retail installment contract" means any agreement, entered into in this state, evidencing a retail installment sale of a motor vehicle, other than for the purpose of resale, pursuant to which title to, or a lien upon the motor vehicle is retained by the retail seller as security for the retail buyer's obligation. This term includes a mortgage, conditional sale contract or any contract for the bailment or leasing of a

1 motor vehicle by which the bailee or lessee contracts to pay as compensation for its
 2 use a sum substantially equivalent to the time sale price of the motor vehicle and by
 3 which it is agreed that the bailee or lessee is bound to become, or has the option of
 4 becoming for no additional consideration or for nominal additional consideration,
 5 the owner of such motor vehicle;

6 (4) "Motor vehicle" means any device in, upon, or by which any person or property is,
 7 or may be transported or drawn upon a highway. The term does not include self-
 8 propelled wheelchairs and invalid tricycles, tractors, power shovels, road
 9 machinery, implements of husbandry and other agricultural machinery, or other
 10 machinery not designed primarily for highway transportation but which may
 11 incidentally transport persons or property on a highway, or devices which move
 12 upon or are guided by a track or travel through the air. A moped as defined in KRS
 13 190.010 and a recreational vehicle shall be subject to the same requirements as a
 14 motor vehicle under this section;

15 (5) "Retail seller" or "seller" means a person who sells or agrees to sell a motor vehicle
 16 under a retail installment contract to a retail buyer;

17 (6) "Retail buyer" or "buyer" means a person who buys or agrees to buy a motor vehicle
 18 from a retail seller not for the purpose of resale and who executes a retail
 19 installment contract in connection therewith;

20 (7) "Sales finance company" means a person engaged in the business of creating and
 21 holding or purchasing or acquiring retail installment contracts from a retail seller.
 22 The term includes a bank, trust company, private banker, industrial bank,
 23 investment company or national bank, if so engaged;

24 (8) "Cash sale price" means, for purposes of KRS 190.090 to 190.140 only, and not for
 25 purposes of KRS 138.455 to 138.470, the price at which the seller would in good
 26 faith sell to the buyer, and the buyer would in good faith buy from the seller, the
 27 motor vehicle which is the subject matter of the retail installment contract, if such

1 sale were a sale for cash, instead of a retail installment sale. The cash sale price may
2 include:

- 3 (a) Any taxes, registration fees, certificate of title fees, and, if any, license fees;
- 4 (b) Charges for delivery, servicing, repairing, or improving the motor vehicle,
5 including accessories and their installation;
- 6 (c) Charges for a service contract, mechanical breakdown insurance, a
7 maintenance agreement, a vehicle protection product, and any other goods or
8 services related to the sale that the buyer agrees to purchase from the seller;
9 and

10 (d) Any processing fee;

11 (9) "Official fees" means the fees prescribed by law for filing, recording, or otherwise
12 perfecting and releasing or satisfying a retained title or a lien created by a retail
13 installment contract;

14 (10) "Finance charge" means that part of the time sale price by which it exceeds the
15 aggregate of the cash sale price, the amount, if any, included for insurance and other
16 benefits and official fees included in the retail installment sale;

17 (11) "Maintenance agreement" means a contract of limited duration that provides for
18 scheduled maintenance and parts related to such maintenance. A maintenance
19 agreement shall not be considered a contract of, or for, insurance;

20 (12) "Service contract" means a contract or agreement given for consideration in
21 addition to the purchase price of a new or used motor vehicle to provide for repair
22 or replacement service or indemnification for that service for the operation or
23 structural failure of a motor vehicle due to a defect in materials or skill of work or
24 normal wear and tear, but does not include mechanical breakdown insurance or
25 maintenance agreements. A service contract shall not be considered a contract of, or
26 for, insurance;

27 (13) "Truth in Lending Act" means Title I of Pub. L. No. 90-321, codified at 15 U.S.C.

1 secs. 1601 to 1667f, as may be amended from time to time;

2 (14) "United States Rule" means that in partial payments on a debt, each payment is
3 applied first to the finance charge and any remainder reduces the principal. Under
4 this rule, accrued but unpaid finance charges cannot be added to the principal and
5 interest cannot be compounded;

6 (15) "Vehicle protection product" means a vehicle protection device, system, or service
7 that is installed on or applied to a vehicle that is designed to deter the theft of the
8 vehicle, and includes a written warranty that provides that if the product fails to
9 deter the theft of the vehicle, the warranty holder shall be paid specified incidental
10 costs by the warrantor as a result of the failure of the device, system, or service to
11 perform pursuant to the terms of the warranty. Vehicle protection products include
12 but are not limited to window etch products and body part marking products. A
13 vehicle protection product shall not be considered a contract of, or for, insurance;
14 and

15 (16) Words in the singular include the plural and vice versa.

16 ➔Section 22. KRS 190.260 is amended to read as follows:

17 As used in KRS 190.270 to 190.320:

18 (1) "Odometer" means an instrument for measuring and recording the actual distance a
19 motor vehicle or motor home as defined in Section 1 of this Act travels while in
20 operation; but shall not include any auxiliary odometer designed to be reset by the
21 operator of the motor vehicle for the purpose of recording mileage on trips.

22 (2) "Repair and replacement" means to restore to a sound working condition by
23 replacing the odometer or any part thereof or by correcting what is inoperative.

24 (3) "Transfer" means to change ownership by purchase, gift, or any other means.

25 ➔Section 23. KRS 190.270 is amended to read as follows:

26 (1) It is unlawful for any person to advertise for sale, to sell, to use, or to install or to
27 have installed, any device which causes an odometer to register any mileage other

1 than the true mileage driven. For purposes of this section, the true mileage driven is
 2 that mileage the vehicle has been driven as registered by the odometer within the
 3 manufacturer's designed tolerance.

4 (2) It is unlawful for any person or his agent to disconnect, reset, or alter the odometer
 5 of any motor vehicle or motor home with the intent to change the number of miles
 6 indicated thereon.

7 (3) It is unlawful for any person with the intent to defraud to operate a motor vehicle or
 8 motor home on any street or highway knowing that the odometer of such vehicle is
 9 disconnected or nonfunctional.

10 (4) The commission shall deny, suspend or revoke the license of any person who
 11 violates or causes, aids or abets any violation of this section which denial,
 12 suspension or revocation may be in addition to, and not exclusive of, any other
 13 penalties provided for elsewhere in this chapter.

14 ➔Section 24. KRS 190.300 is amended to read as follows:

15 (1) Any transferor must give a written disclosure to the transferee in connection with
 16 the transfer of ownership of a motor vehicle or motor home:

17 (a) Disclosing the cumulative mileage registered on the odometer.

18 (b) Disclosure that the actual mileage is unknown, if the odometer reading is
 19 known to the transferor to be different from the number of miles the vehicle
 20 has actually traveled.

21 (2) It shall be a violation of this section for any transferor to knowingly give a false
 22 statement to a transferee in making any disclosure required by this section.

23 ➔Section 25. KRS 190.990 is amended to read as follows:

24 (1) Except as provided in subsection (5) of this section, any person who violates or
 25 causes, aids or abets any violation of any provision of KRS 190.010 to 190.080 and
 26 Sections 1 to 14 of this Act, as such provisions apply, respectively, to new motor
 27 vehicle dealers, new recreational vehicle dealers, manufacturers, distributors,

1 factory branches, or factory representatives, or any order, rule or regulation
 2 lawfully issued pursuant to authority granted by KRS 190.010 to 190.080 shall be
 3 fined not less than twenty-five dollars (\$25) nor more than five hundred dollars
 4 (\$500), or imprisoned for not more than thirty (30) days, or both. Any person who
 5 violates paragraphs (l), (m) or (n) of subsection (1) of KRS 190.040 may also be
 6 subject to a suspension or revocation sentence of not more than a year effective only
 7 in the territory formerly served by the unfairly canceled dealer, except that in a
 8 metropolitan area serviced by several dealers handling the same motor vehicle or
 9 recreational vehicle, the suspension or revocation order shall not be applicable to
 10 the remaining dealers.

11 (2) Any person who willfully and intentionally violates any provision of KRS 190.090
 12 to 190.140 shall be guilty of a misdemeanor and upon conviction shall be punished
 13 by a fine not exceeding five hundred dollars (\$500).

14 (3) A willful violation of KRS 190.100 or 190.110 by any person shall bar his recovery
 15 of any finance charge, delinquency, or collection charge on the retail installment
 16 contract involved.

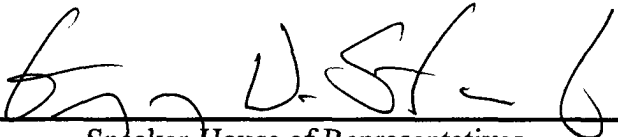
17 (4) Any person who willfully violates KRS 190.270 to 190.320 shall be subject to a
 18 penalty of five thousand dollars (\$5,000) per violation, which may be recovered on
 19 behalf of the Commonwealth by the Attorney General.

20 (5) Any person who willfully and fraudulently gives a false statement as to the total and
 21 actual consideration paid for a motor vehicle under KRS 138.450 shall be guilty of a
 22 Class D felony and shall be fined not less than two thousand dollars (\$2,000) per
 23 offense.

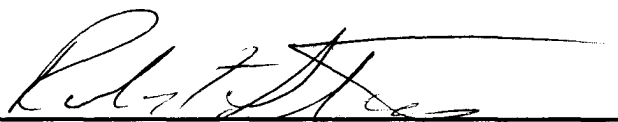
24 ➔Section 26. This Act may be cited as the Recreational Vehicle Dealer Franchise
 25 Act of 2014.

26 ➔Section 27. The provisions of this Act shall apply to any recreational vehicle
 27 manufacturer-dealer agreement entered into on or after the effective date of this Act.

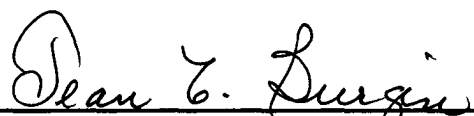
1 ➔ Section 28. This Act takes effect January 1, 2015.




Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 4-7-14